

## **Section II (Remarks)**

### **A. Summary of Amendment to the Claims**

Claims 1, 30, 47, and 54 have been amended as set forth in the above Complete Listing of the Claims.

As amended, the claims are supported by the specification and the original claims and do not add new matter, as defined by 35 U.S.C. § 132. Specifically, the amendments to claims 1, 30 and 47 are supported in the specification at page 7, lines 20-22. Support for new claim 59 is found in the prior language of amended claim 1 and in original claim 8. Support for new claim 60 is found in previously pending claim 31, as added to the application by preliminary amendment, concurrent with filing of the application.

The amendments do not require a new search, or raise new issues for consideration because they merely address issues already raised by the examiner or define applicants' invention more clearly.

It is submitted that the amendments place the claims in condition for allowance or in better condition for appeal by reducing the number of issues for consideration on appeal.

The amendments were not made earlier in the prosecution because it is maintained that the previously pending claims were allowable.

Since the amendments do not add new matter or require a new search or consideration, and place the claims in condition for allowance or in better condition for appeal, entry of the amendment is respectfully requested.

Thus, upon entry of the amendments, claims 1, 2, 4, 6, 7, 9, 30, 32, 34, 35, 37, 38, 39, 40, 41, 42, 47, 48, 49, 50, 51, 52, 53, 54, 55, 57, 58, 59, and 60 will be pending and under examination.

### **B. Rejection of claims under 35 U.S.C. §103(a)**

In the Final Office Action mailed February 19, 2009 the examiner has rejected claims 1, 2, 4, 6, 7, 9, 30, 32, 34, 35, 37-42, 47-55, 57, and 58 as obvious over U.S. Patent Application Publication No. 2003/0059205 (hereinafter "Carlson") in view of U.S. Patent No. 5,365,217 (hereinafter

“Toner”) and further in view of U.S. Patent Application Publication No. 2004/0073093 (hereinafter “Hatlestad”). Applicants respectfully disagree.

The examiner’s attention is respectfully drawn to the amended claims of the application, as set forth in Section I above. Independent claim 1 recites a method that includes measuring a physiological parameter and independent claims 30 and 47 recite systems including receiving a physiological parameter. As amended, each of claims 1, 30 and 47 recite comparison of “the physiological parameter reading with a first predetermined physiological parameter threshold value to determine if the first person is wearing the device properly, wherein the physiological parameter is body temperature.” Accordingly the claims recite a method or system including measuring or capturing of body temperature as a physiological parameter to ensure the device is not dislodged from the person.

In rejection of the claims, the examiner asserted that primary reference “Carlson fails to disclose locating a person via access stations arranged within an area, thereby dividing the area into calls.” (Final Office Action mailed February 19, 2009, p. 3.) Toner et al. was cited to remedy the deficiencies of Carlson, where Toner provides “a grid of detector stations that provide location information and relay alerts to a central monitoring station.” (Final Office Action mailed February 19, 2009, p. 4) The combination of Carlson and Toner was described as “silent regarding applying correction factors to the measured waveforms to compensate for the context in which the data is measured.” (Final Office Action mailed February 19, 2009, p. 4.) The Hatlestad reference was cited to remedy the deficiencies of the combination of Carlson and Toner, since “Hatlestad states that applying correction factors increases the reliability of the measured data and improves assessments of the patient’s health.” (Final Office Action mailed February 19, 2009, p. 4.)

However the combination of Carlson in view of Toner and further in view of Hatlestad does not provide a method or a system including comparison of the physiological parameter reading with a first predetermined physiological parameter threshold value to determine if the person is wearing the device properly, where the physiological parameter measured or captured is body temperature.

With regard to positioning of EKG electrodes, Carlson describes “a continuous check ...carried out of the extent to which the electrodes are fixed at the correct site.” (para. [0033]) For such a

determination the voltage is checked (see ll. 6-8 of para. [0033]) and compared with a threshold voltage value in order to determine if the person is wearing the device properly. Carlson does not describe using body temperature as a physiological parameter to determine whether the electrodes are properly located.

Carlson explicitly states that it is essential that the electrodes are always kept in the same position in order to permit the precise registration of an EKG (ll. 11-13 of para. [0019]), and the voltage is used to check whether or not the electrodes are fixed at the correct site (ll. 6-8 of para. [0033]). Thus, it can be seen that by the configuration of Carlson voltage is used as a physiological parameter to ensure that the electrode is at a fixed site on a person.

Where Carlson describes body temperature, it is with regard to medical data relevant to the measured EKG. Where irregularities in body temperature are detected (e.g. “the ear temperature is low, such as for example in winter, etc.”) such information is used “in order to affect or adjust for example the measured rhythm, the light intensity, measuring intervals, etc.” (Carlson para. [0110], ll. 5-6.) However, Carlson does not describe detection of changes in body temperature as indicative of improperly located sensors.

Thus, Carlson et al fails to disclose the feature amended claim 1 of “comparing the physiological parameter reading with a first predetermined physiological parameter threshold value to determine if the person is wearing the device properly, wherein the physiological parameter is body temperature.” Citation of Toner and Hatlestad fail to remedy this deficiency.

As described above, Toner is cited as demonstrating a grid of access stations for locating a person and Hatlestad was cited as demonstrating that correction factors can be applied to measured data.

The combination of Carlson in view of Toner and further in view of Hatlestad does not provide a method or a system including evaluation of body temperature to determine if the person is wearing the device properly. As detailed above, Carlson does not provide a method or a system including evaluation of body temperature to determine if the person is wearing a device properly. However Carlson provides a complete system with electrodes and additional sensors. Nothing in the combination of Carlson in view of Toner and further in view of Hatlestad would prompt one of skill in the art to further modify Carlson to use body temperature to determine if the person is

wearing the device properly. Accordingly, none of independent claims 1, 30 or 47 is obvious in view of the cited combination of references.

If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). (MPEP §2143.03) Accordingly, claims 2, 4, 6, 7, 9, 32, 34, 35, 37-42, and 47-53, and new claims 59 and 60 are not obvious in view of the cited references.

Additionally in the Final Office Action mailed February 19, 2009 the examiner rejected claim 54 and claims 55, 57 and 58 dependent therefrom. The examiner's attention is respectfully drawn to the particular language of claim 54. Claim 54 recites "wherein the physiological parameter measuring device is adapted to be attached to the first person such that it is capable of measuring a physiological parameter when in contact with the abdomen of said person." The combination of Carlson in view of Toner and further in view of Hatlestad does not provide such a measurement of a physiological parameter.

Carlson describe measuring sensors preferably "disposed on or in the body such that they ensure maximum freedom of movement and minimum impairment of normal life. All sensors are advantageously disposed in a single sensor unit which can be worn, for example, as a wrist band, as a finger clip, on the ear or subcutaneously..." (para. [0011]) Where EKG sensors are described by Carlson, such are placed on the chest and fixed in place by use of device such as a chest belt, suction cups of shoulder straps. (para. [0012]) Carlson does not describe an abdominally-located device measuring a physiological parameter.

Citation of Toner and Hatlestad in combination with Carlson fail to remedy the deficiencies of Carlson, as the combination of references does not describe an abdominally-located device measuring a physiological parameter.

Independent claim 54 is therefore nonobvious in view of the cited combination of references. Correspondingly, claims 55, 57 and 58 dependent therefrom are also nonobvious in view of the cited combination of references.

As Carlson in light of Toner and further in view of Hatlestad does not provide any logical basis for the method or system recited in claims 1, 2, 4, 6, 7, 9, 30, 32, 34, 35, 37-42, 47-55, 57, and 58 or new claims 59 and 60, Carlson in light of Toner and further in view of Hatlestad does not

render the claimed invention obvious. Accordingly, withdrawal of the rejection of claims 1, 2, 4, 6, 7, 9, 30, 32, 34, 35, 37-42, 47-55, 57, and 58 under 35 U.S.C. § 103 (a) as being obvious over Carlson in light of Toner and further in view of Hatlestad is respectfully requested.

**C. Fee Payable for Added Claims**

By the present Amendment, two new total claims have been introduced. However, the total number of claims remains below the numbers for which payment was previously made.

26 total claims were paid for with the filing of the application on January 12, 2006 and an additional 12 claims and 2 independent claims were paid for in the Response submitted October 15, 2007. Accordingly, 5 independent claims and 38 total claims have been paid for in prosecution of this application.

As presently pending, the application contains 29 total claims, 4 of which are independent claims. No additional claims fees are required by the present Response.

**CONCLUSION**

Based on the foregoing, all of applicants' pending claims 1, 2, 4, 6, 7, 9, 30, 32, 34, 35, 37, 38, 39, 40, 41, 42, 47, 48, 49, 50, 51, 52, 53, 54, 55, 57, 58, 59, and 60 are patentably distinguished over the art, and in form and condition for allowance. The examiner is requested to favorably consider the foregoing and to responsively issue a Notice of Allowance.

This responds to the February 19, 2009 Final Office Action in the above-identified application. The time for responding to the February 19, 2009 Office Action without extension was set at three months, or April 19, 2009. This Response is therefore timely and no fees are believed to be due for the filing of this paper. However, should any fees be required or an overpayment of fees made, please debit or credit our Deposit Account No. 08-3284, as necessary.

If any issues require further resolution, the examiner is requested to contact the undersigned attorneys at (919) 419-9350 to discuss same.

Respectfully submitted,

Date: April 20, 2009

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